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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	Docket#
UNITED STATES OF AMERICA :	02-CR-606
:	
- versus - :	U.S. Courthouse
:	Brooklyn, New York
PETER GOTTI, et al., :	
Defendant :	July 10, 2002
-----X	

TRANSCRIPT OF CRIMINAL CAUSE FOR BAIL APPLICATION
BEFORE THE HONORABLE FREDERIC BLOCK **FILED**
UNITED STATES DISTRICT JUDGE IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.

A P P E A R A N C E S: ★ OCT 2 2008 ★

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1 THE CLERK: This is Criminal Cause for
2 a Bail Application, United States of America
3 v. Primo Cassarino.

4 Counsel, please state your name for
5 the record. You may have to step forward
6 because we're recording.

7 MR. GENSER: Andrew Genser for the
8 United States.

9 Good afternoon, your Honor.

10 THE COURT: Good afternoon.

11 MR. WHALEN: Rick Whalen for the
12 government.

13 MR. PORCO: Dominick Porco, for the
14 defendant.

15 Good afternoon, your Honor.

16 THE COURT: All right.

17 And we have pretrial services here, I
18 believe.

19 MS. VASQUEZ: Pretrial Services
20 Officer Lourdes Vasquez.

21 THE COURT: I'm sorry?

22 MS. VASQUEZ: Lourdes Vasquez.

23 THE COURT: Ms. Vasquez, nice to see
24 you here.

25 Let me just start by telling you what

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1 I have in my file that's been presented to me.
2 I have Mr. Porco's letter of June 28 that runs
3 ten pages and I have the government's response
4 of July 9, which runs 34 pages. We don't
5 necessarily make our determinations based on
6 numerosity of the pages.

7 MR. GENSER: Mine is double-spaced,
8 your Honor.

9 MR. PORCO: Thank God for that.

10 THE COURT: And we have a number of
11 exhibits attached to Mr. Genser's submission.
12 I assume, Mr. Porco, you've seen all that.

13 THE DEFENDANT: I have.

14 THE COURT: I have the initial
15 pretrial services report which is dated June 4
16 and Ms. Vasquez, on behalf of pretrial
17 services makes the following recommendation.

18 Solely in regard to the risks of
19 non-appearance, pretrial services would
20 recommend that this defendant's release be
21 contingent upon a substantial bond and then
22 she goes on to talk about that it should be
23 properly secured.

24 It concludes by saying that if the
25 government can show through clear and

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1 convincing evidence that the defendant poses a
2 serious risk of danger, other more restrictive
3 conditions, including possibly detention may
4 be necessary. So, the focus by Ms. Vasquez is
5 in regard to the risks of flight.

6 And then I have handed to me just
7 literally seconds ago, an addendum by
8 Ms. Vasquez dated July 10 and the addendum
9 expresses its satisfaction with the suretors
10 and concludes by saying based on the above, it
11 is pretrial services recommendation that the
12 above noted individuals appear to be suitable
13 sureties. We reaffirm our recommendation for
14 defendant's release on a substantial secured
15 bond co-signed by responsible gainfully
16 employed sureties.

17 However, we reassert that if the
18 government can show clear and convincing
19 evidence that the defendant poses a risk -- a
20 serious risk of danger, other more restrictive
21 conditions including detention may be
22 necessary.

23 So, my sense is that pretrial services
24 is not concerned, based upon the strength of
25 the proposed sureties about a risk of flight.

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1 And I guess that's the government's position,
2 as well.

3 Am I reading you correctly,
4 Mr. Genser, since you focus on the risks of
5 danger to the community.

6 MR. GENSER: Well, we think that there
7 clearly is a risk of flight which in all
8 likelihood could be addressed if that were the
9 only issue through a very substantial bond and
10 release conditions.

11 THE COURT: Well, could, would, should
12 but you're focus is on the risk of danger to
13 the community.

14 MR. GENSER: Absolutely, Judge.
15 That's the focus.

16 THE COURT: Yes, I think that the
17 proposed sureties here satisfy the risk of
18 flight scenario and the standard there, if I
19 recall correctly, is just one of -- not of
20 clear and convincing but simply of the
21 preponderance of the evidence.

22 So, I really don't think there's a
23 question here of risk of flight in light of
24 the proposed sureties. The concern here is on
25 the danger to the community and I'm going to

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1 focus on that.

2 MR. GENSER: And the risk of
3 obstruction, your Honor.

4 THE COURT: Well, that seems to be
5 part and parcel of the danger to the
6 community.

7 MR. GENSER: Yes.

8 THE COURT: So, Mr. Porco --

9 MR. PORCO: Yes, Judge.

10 THE COURT: -- the real problem I have
11 here, which I am sure you anticipate, is we
12 have here hard evidence, unlike many of these
13 bail application scenarios, with your client
14 being on tape visiting a host of threats or
15 intimidating comments and arguably some of
16 them can be construed as a desire to obstruct
17 justice. And in the face of that, how can I
18 really be comfortable that he should be
19 released?

20 MR. PORCO: Yes, it is the fundamental
21 issue before the Court on this bail
22 application, a feeling that the Court -- a
23 comfort level that the Court needs to reach
24 that it's doing the right thing in releasing
25 this defendant and that it is not exposing

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1 anyone to danger.

2 And it was my hope that through the
3 submissions that I sent to the Court, as well
4 as through some of the government's
5 submissions, as well, that the Court would
6 come to the same conclusion that apparently
7 pretrial services has now twice.

8 THE COURT: Well, pretrial services
9 has not come to the conclusion which you
10 suggest. As I read pretrial services
11 recommendations, they focus on the risk of
12 flight and they point out very succinctly that
13 if the Court were to conclude that there's a
14 danger to the community, that detention might
15 be warranted.

16 Am I reading you correctly?

17 MR. PORCO: Well, they --

18 THE COURT: All right.

19 MR. PORCO: Except that they also
20 indicate that if the Court concludes -- and
21 again, they're doing their job well. They're
22 leaving that determination to the Court.
23 They're not taking a position as to whether or
24 not the defendant is a danger or not.

25 THE COURT: Well, let me interrupt.

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1 Pretrial services is here. I want to give
2 Ms. Vasquez her money's worth. She can speak
3 for herself.

4 MR. PORCO: Yes.

5 THE COURT: Would you like to add
6 anything?

7 MS. VASQUEZ: No, your Honor, I think
8 my addendum addresses the issues.

9 MR. PORCO: But there is a line,
10 your Honor -- there is a line in the
11 concluding paragraph that I think is -- ought
12 to be the focus here, which was not in the
13 Court below.

14 And that is whether or not beyond mere
15 execution of a substantially secured bond,
16 whether there are more restrictive conditions,
17 including detention; detention being one of
18 the options.

19 It seems to me, your Honor, that thus
20 far, the only option that has been considered
21 here, the only option that has been discussed,
22 has been detention.

23 There are other factors here and the
24 biggest difficulty that I've had with the case
25 thus far is that no one has suggested

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1 anything, has pointed to any concrete fact
2 beyond the four corners of the indictment.

3 I would like to invite the Court's
4 attention to page 29 of the government's
5 submission to you.

6 THE COURT: All right.

7 MR. PORCO: In the middle of the page
8 under paragraph 3, which by the way, paragraph
9 3 is -- addresses the issue I just identified,
10 are there any conditions that can assure the
11 safety of the community. They say no, there
12 are not.

13 And in the middle of that paragraph,
14 they state here Cassarino's own conduct has
15 eliminated any reason to believe he will abide
16 by the bail conditions.

17 Now I stop there and I say okay,
18 something's coming. They're going to tell me
19 about all these things that he has done
20 outside the four corners of the indictment
21 because if you only look at the allegations of
22 the indictment -- and this case is like any
23 other case, like any other defendant charged
24 with a serious crime who has been released, is
25 there something in this man's background that

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1 brings to the Court's attention, that raises
2 the Court's concern and says, you know what,
3 no matter what I do with him, no matter where
4 I put him, unless it's the MDC, this man is
5 not likely to follow the directions of the
6 Court. And they don't do that, your Honor.

7 What they do is they then follow with
8 the allegations of the indictment. And I
9 grant, your Honor, that this is a serious case
10 and I grant, your Honor, that this is a case
11 that involves allegations of violence. And I
12 will grant even further that I've heard some
13 of those conversations and they are troubling.

14 There are exaggerations, to be sure.
15 The government insists that there's a
16 reference to -- by Mr. Cassarino to grabbing
17 someone's mother and that being a threat to
18 kidnap. It is not. It is a colloquial
19 expression to go grab somebody to contact. If
20 I say I'm going to get a hold of someone, I
21 don't literally mean grab them by the lapels.
22 I'm going to contact them. It's an expression
23 I've heard -- in 25 years of being in this
24 profession that I have heard.

25 THE COURT: Let me stop you at this

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1 point. First of all, the record should be
2 clear that my determination will be based upon
3 the standard of clear and convincing evidence
4 which applies to the issue of dangerousness
5 and that I will consider and comment as we go
6 along, the standards which are delineated in
7 second circuit law; namely the nature and
8 circumstances of the crime charged, the weight
9 of the evidence against the defendant, the
10 history and characteristics of the defendant,
11 including family ties, employment, community
12 ties, past conduct, and the nature and
13 seriousness of the danger to the community or
14 to an individual.

15 The nature and circumstances of the
16 crime charged --

17 MR. PORCO: It doesn't help me.

18 THE COURT: -- you acknowledge are --

19 MR. PORCO: It does not help me.

20 THE COURT: -- very, very serious.

21 MR. PORCO: Yes.

22 THE COURT: So that certainly weighs
23 against you.

24 MR. PORCO: Absolutely.

25 THE COURT: Let's talk about the

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1 weight of the evidence against the defendant.

2 In many of these bail cases, I'm
3 presented with proffers by the government.
4 Many times they're based upon confidential
5 sources. They present particular difficulties
6 because I have to satisfy myself that these
7 confidential sources are reliable and that the
8 government is not being led by the nose,
9 so-to-speak, by people who, you know, perhaps
10 should not be believable.

11 And there are procedures and processes
12 and techniques which we employ to give us the
13 requisite comfort level that that proffer is
14 something that's reliable and that I can
15 consider in the equation.

16 Here, however, I have absolute
17 evidence of direct activity on the part of the
18 defendant that is beyond what you just say
19 about the so-called colloquial expressions
20 about the mother.

21 Let me point out some of these as I
22 went through the government's submissions. I
23 assume that these references to the tapes are
24 accurate. If not, you'll let me know.

25 MR. PORCO: Yes.

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1 THE COURT: But Mr. Cassarino is heard
2 saying, for example, to Bondi, that "I want
3 it" and I'll use the word, "fucking on record
4 that I gave him a beating that I hit him. I
5 want that. You know what I am saying."

6 And Bondi says, "Right."

7 Then there's a conversation where
8 Cassarino is talking to Tommy and he says,
9 "Bust his fucking head. Don't worry about
10 it."

11 And when Tommy asks whether he could
12 do that, Cassarino says, "Bust his fucking
13 head. Don't worry about it. Crack his head.
14 If you got to fucking beef, crack his fucking
15 head."

16 And Tommy says, "No problem."

17 Primo says, "Don't worry about it."

18 Later on, there's another tape where
19 Mr. Cassarino is talking to Eddie and in the
20 course of that conversation he says things
21 such as "Listen to me, listen to me, when I
22 tell you to fucking do something, you do it.
23 I don't care if you like it or you don't
24 fucking like it."

25 And he goes on and later on he says,

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1 "If you don't like it, let me know now. I'll
2 come there and throw you through the fucking
3 window."

4 I also took note of his conversation
5 with Phil, where he says, "Listen, I am going
6 to grab your mother today." That's what
7 you're talking about. "Don't worry about it.
8 I'm going to grab her one way or another. Do
9 you hear what I'm telling you? I'm going to
10 get the fucking money today, too."

11 So, getting the money today suggests a
12 little bit of possible coercion.

13 MR. PORCO: Coercion, your Honor, to
14 the extent that he's -- I'm sorry, I don't
15 mean to interrupt.

16 THE COURT: But Mr. Porco --

17 MR. PORCO: I didn't mean to interrupt
18 you.

19 THE COURT: I'm trying to present you
20 -- I certainly respect the fact that you're
21 doing an outstanding job on behalf of your
22 client, which is your professional
23 responsibility.

24 Of course, my role is a little
25 different than yours but I am just trying to

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1 give you a combination of portions of the
2 tapes that I have highlighted that I think
3 really does make a very compelling case for
4 the notion that the weight of the evidence is
5 strongly, almost interloculantly, you know,
6 compelling against the defendant and it seems
7 that he's going to have a hard time escaping
8 conviction.

9 You have, in other words, in sum, hard
10 core evidence of his guilt in this case. And
11 that seems to dominate over everything else
12 that you argue.

13 Let's go on with the other factors;
14 the history and characteristics of the
15 defendant, including family ties, employment,
16 community ties, past conduct.

17 Well, I don't see a lot about
18 community ties that's been presented to me.
19 His past conduct, he does have some, arguably
20 minor, criminal convictions. You've
21 referenced that they are misdemeanors. I take
22 note of that. The government would put a more
23 onerous spin on that but he's not lily white
24 clean.

25 And he has family ties; that appears

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1 to be the case and as is often the case with
2 people who live a dichotomous lifestyle,
3 they're very supportive and they're good
4 neighbors but they still engage in criminal
5 conduct.

6 But I do credit that Mr. Cassarino
7 apparently has hard felt family commitments
8 here. And, of course, the circumstances of
9 his daughter certainly reinforces that. I
10 recognize that.

11 His characteristics, well, I don't
12 know as much about him now as I possibly will
13 get to know later on but it doesn't seem as if
14 he has significant employment. There's some
15 employment that apparently he can point to but
16 I don't see where his characteristics one way
17 or the other should influence my decision, I
18 suspect.

19 And then last, the nature and
20 seriousness of the danger to the community or
21 to an individual. Look, hopefully, it's more
22 difficult for somebody to threaten someone
23 from jail than it is from their home.

24 In the world of reality, I guess,
25 there are ways in which threats can be visited

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1 by somebody in jail or you can create a mini
2 jail scenario in somebody's home. But the
3 second circuit cautions against creating a
4 home environment that's the equivalent of
5 detention.

6 And I think that we ought to go with
7 the assumption that it would be more difficult
8 to visit threats on somebody in jail than if
9 somebody was not in jail.

10 So, that's my take. Now I want to
11 give you an opportunity to say what you wish
12 now that you know my sensibilities and my
13 predilections. And I'll give Mr. Genser an
14 opportunity to speak briefly but I just tell
15 you right now that I think you're up against
16 it.

17 MR. PORCO: I appreciate the Court
18 giving me a bird eye's view, as it were, of
19 what it's thinking as I am speaking because
20 that is the most helpful that the Court could
21 be in having me say things that are relevant,
22 as opposed to going off on a tangent that
23 don't mean anything to you.

24 THE COURT: I think it's better that
25 way than I just I listen for a half hour and

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1 then you don't know what really is --

2 MR. PORCO: Exactly.

3 THE COURT: -- effecting me.

4 MR. PORCO: If we were -- if I were
5 standing before your Honor at the time of
6 sentencing, then some of these conversations
7 that are sort of shocking would be troublesome
8 from -- just from their own nature.

9 But the focus here, your Honor, it
10 seems to me, is whether or not there is a
11 likelihood -- that's what the government has
12 to show, that there is a likelihood that if
13 you release him, he's going to continue to
14 commit crimes.

15 I can stand before you --

16 THE COURT: I'm not so sure that
17 that's really the most apt expression of the
18 legal standard. It's clear and convincing
19 evidence that the defendant presents a danger
20 to the community. Yes, you can say that it
21 oculi translate into a likelihood that he is
22 going to commit a crime but that's not quite
23 the correct articulation of the standard.

24 MR. PORCO: But that is the concern in
25 the bail -- in the detention equation, as it

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1 were. The concern -- you are going to detain
2 him if you feel that unless you detain him, he
3 poses a danger to the community.

4 And what does that mean, a danger to
5 the community? Right, there's a danger
6 because he has la cosa nostra label on him?
7 No, it means that you're concerned that he's
8 going to go out and whether he's within the
9 confines of his home or wherever he is, that
10 he's going to continue in his illegal conduct.
11 That's what --

12 THE COURT: Well, no, it's just much
13 more basic than that. At home, you know, I'm
14 not going to be there, you're not going to be
15 there, we're not going to have 24 hour a day
16 monitors to see who is going to come into the
17 premises and who is going to come and go, or
18 what family members may be coming and going
19 into the house or friends. There's just much
20 more of an opportunity for him to do what he's
21 done, apparently, in the past.

22 MR. PORCO: Right.

23 THE COURT: And that's to use people
24 as a vehicle for threatening other people and
25 to put himself in the best posture to avoid

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1 conviction by threats.

2 MR. PORCO: That's your Honor's
3 concern. That is the --

4 THE COURT: Well, yes.

5 MR. PORCO: -- the ultimate concern
6 here that outside the confines of detention,
7 he's in a better position to continue those
8 crimes.

9 What I am suggesting to the Court --
10 what I have attempted to suggest to the Court
11 is this, first of all, I have raised the issue
12 of his daughter, not because we're seeking to
13 evoke sympathy of the Court -- oh, he's --
14 please give him bail, Judge, because he has a
15 daughter who is about to undergo surgery. No,
16 that's the spin that the government puts on
17 what I say.

18 But the fact of his daughter's surgery
19 and it isn't cosmetic, it's not a tummy tuck
20 and it's not a face lift, it is the almost
21 complete reconstruction of a prepubescent
22 child's face and how that effects her overall
23 well being.

24 THE COURT: Do you think that maybe
25 Mr. Cassarino should have thought about his

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1 daughter before he engaged in these apparent
2 criminal acts as reflected in these tapes?

3 MR. PORCO: Well, of course he should
4 have. Of course he should have. He didn't.
5 To the extent that the government's tapes
6 accurately show what he said, what his words
7 were, because that's what -- really what we're
8 talking about here are the words, by the way,
9 there has -- that I know of, there has not
10 been an allegation made here that anyone at
11 any time was actually physically hurt by this
12 man.

13 THE COURT: I'm not so sure that the
14 government needs to prove that in order to
15 obtain a conviction.

16 MR. PORCO: I'm not suggesting that
17 they should.

18 THE COURT: All right. But, you know,
19 basically, I just don't -- look, I'm not
20 trying this case. The jury's going to try
21 this case when it goes to trial but I tell you
22 right now, I can't see how he's going to avoid
23 a conviction here just based upon these tapes
24 alone.

25 Be that as it may, with all due

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1 respect, I am going to deny the application.
2 I don't think I have to repeat the findings
3 that I have made. I think it's clear from the
4 record. I've gone through of all these
5 factors.

6 But I just wanted to, as a courtesy to
7 you, explain to you my rationale and thinking
8 so that you know that I've given this very
9 serious consideration.

10 I do sympathize with the fact that
11 Mr. Cassarino's daughter has these problems
12 but I can't let that override all of these
13 other factors.

14 MR. PORCO: Your Honor, if I -- you
15 have ruled and that's that but I just wanted
16 to, at least for the benefit of the
17 defendant's family --

18 THE COURT: By all means.

19 MR. PORCO: -- I would like to put the
20 factor of the circumstance of his daughter's
21 surgery in the proper context.

22 The reason why it's important for
23 Mr. Cassarino to be with his daughter -- it is
24 not for Mr. Cassarino's benefit, it is for the
25 daughter's benefit. It is for the daughter's

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1 well being.

2 I can say this to, your Honor, that
3 Mr. Cassarino said to me that he wants to be
4 out, so that he could be with his daughter.
5 But for that, he can stay where he is.

6 THE COURT: Well, but his --

7 MR. PORCO: So, it's for his
8 daughter's sake.

9 THE COURT: I know.

10 MR. PORCO: Not for him. I even
11 offered to the government, I said, we will put
12 together a bail package and we will have it
13 for a limited duration on a given date, long
14 before trial, long before this certain --

15 THE COURT: When does she --

16 MR. PORCO: -- we'll come back.

17 THE COURT: She's going in for surgery
18 when? Next week?

19 MR. PORCO: Monday.

20 THE COURT: Let me ask Mr. Genser
21 this, as a -- sort of a humanitarian gesture,
22 is there a way in which we can have
23 Mr. Cassarino be there for a day or two during
24 the operation and maybe the immediate recovery
25 phase, then have him returned to jail? I

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1 mean --

2 MR. PORCO: He's willing to do that.
3 He is willing to do that.

4 THE COURT: Let's think about that
5 because that really would not give him the
6 same opportunity that he would have, if I were
7 to just put him under home detention. And it
8 might be a nice way of helping a young child
9 out, without really running much of a risk or
10 danger or exposure.

11 I might be inclined to try to find a
12 vehicle for doing that. Maybe we're talking
13 about two days or three days and then he'll
14 have to come back to jail. I just don't see
15 where that's a real problem.

16 But I -- you know, what do you say
17 about that?

18 MR. GENSER: Judge, it's something
19 that I thought about that it might be
20 suggested and proposed. You know, it's tough
21 because on its face it sounds -- it has the
22 surface appeal of sort of some type of a
23 reasonable effort to do something for this
24 young girl that we're all concerned about.

25 But I have to say that the government

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1 would oppose it. It's not a good idea.

2 There's a record here of dangerousness.

3 THE COURT: Well --

4 MR. GENSER: The Court has so found --

5 THE COURT: Well, I am talking about a
6 very limited period of freedom for a very
7 focused purpose and in that respect,
8 highlighting the concept of family ties with
9 -- and family circumstances, which is a factor
10 that I should consider. And it may well be in
11 this case that I'm not going to allow that
12 factor to keep him out of prison for an
13 extended period of time but it may well be a
14 nice balance to strike to give him a couple of
15 days.

16 What are you talking about, two or
17 three days?

18 MR. PORCO: Well, your Honor's talking
19 about a couple of days. I originally was
20 thinking a little longer but --

21 THE COURT: Well, look, I --

22 MR. PORCO: Whatever -- I am in no
23 position to argue that.

24 MR. GENSER: Well, Judge, this is
25 really the government's concern that once

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1 your Honor takes -- if your Honor chooses to
2 take that step, it then becomes a slippery
3 slope and we have --

4 THE COURT: I'm not going to allow a
5 slippery slope.

6 MR. GENSER: -- the defendant coming
7 back --

8 MR. PORCO: Whatever your Honor
9 ultimately says, I would ask give me a couple
10 of weeks.

11 THE COURT: She's going in --

12 MR. PORCO: You say I am only going to
13 give you a couple of days. Then a couple of
14 days, it is. There will be no applications
15 for extensions, except if, God forbid, there
16 were to be some complication with the child,
17 which no one foresees, okay?

18 THE COURT: You have all these
19 sureties in place today.

20 MR. PORCO: I have all sureties in
21 place.

22 THE COURT: You've confirmed that.
23 The sureties are all in place?

24 MS. VASQUEZ: I'm sorry, your Honor.

25 THE COURT: The sureties are all in

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1 place today?

2 MS. VASQUEZ: Yes, I believe there's
3 one that maybe has to come back.

4 THE COURT: So, I don't want to have
5 to, you know, micro manage all of this but if
6 those sureties are in place, what I will do is
7 I will let him out for one week starting --
8 well, he'll be at the surgery, I guess on
9 Monday.

10 MR. PORCO: Yes.

11 THE COURT: He'll be there, I guess,
12 during the recovery phase.

13 MR. PORCO: Yes.

14 THE COURT: And then the following
15 week, he'll have to return to jail.

16 MR. PORCO: He'll surrender.

17 THE COURT: The sureties will be in
18 place, so that they will know for sure that if
19 he doesn't abide by the one week terms and
20 conditions that I am going to impose, that
21 they are at risk to lose their assets.

22 And I do think, Mr. Genser, that --
23 I'm not terribly concerned about his one week
24 out of jail under these circumstances and we
25 try to strike a balance.

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1 MR. PORCO: Thank you, Judge.

2 MR. GENSER: Judge, I understand your
3 Honor's trying to strike a balance and I
4 respect that but it's my job to just put on
5 the record --

6 THE COURT: Yes.

7 MR. GENSER: -- the government's
8 position on it. Our position is it's a bad
9 idea. It doesn't -- it follows once the Court
10 has found that he's a danger and that these
11 conditions can't assure the safety of the
12 community, that he has to be in jail
13 notwithstanding this situation, which we all
14 agree is sad.

15 I think your Honor hit the nail on the
16 head. He should have thought about this
17 before.

18 THE COURT: I agree with all of that
19 but, you know, once again, I think I've
20 expressed my sentiments on it.

21 Look, you have all these sureties, for
22 one. It's \$1 million just to cover one week.
23 He'll be under home detention. His phone will
24 be monitored and you'll have the opportunity
25 to check on him whenever you chose to do so

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1 during the course of the week. We'll consent
2 to any reasonable search conditions.

3 MR. GENSER: Judge, since it's only
4 for a week, the government would suggest or
5 propose that your Honor include as a condition
6 a 24 hour guard at the defendant's expense to
7 watch him.

8 THE COURT: Who would you propose?

9 MR. GENSER: Oh, there are security --

10 THE COURT: I'm not available next
11 week. I'm going on vacation.

12 MR. GENSER: Neither am I but there
13 are security services that can be retained for
14 this type of situation and I think that --

15 THE COURT: And to monitor who comes
16 and goes?

17 MR. GENSER: -- in light of the
18 findings of dangerousness, it's a precaution
19 that would be wise here. And to accompany
20 Mr. Cassarino, if he's going to -- presumably,
21 the whole point of this is so that he can go
22 the hospital to be with his daughter.

23 THE COURT: It's not a bad idea. You
24 know, I'm not a maven on bail matters because,
25 you know, the magistrate judges, quite

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1 frankly, are faced with many more combination
2 of circumstances than I am in the course of my
3 business. So, I just try to think these
4 things through in a reasonable way.

5 What do you think about that?

6 MR. PORCO: It hits me by surprise. I
7 hadn't considered that but as I said earlier,
8 Judge, we're in no position to argue with
9 almost any condition that the Court would seek
10 to impose.

11 THE COURT: Then why don't we --

12 MR. PORCO: I --

13 THE COURT: Can you get somebody for a
14 week? I mean --

15 MR. GENSER: Absolutely, that can be
16 done, your Honor.

17 THE COURT: All right. So, why don't
18 we do that? The defendant will pay and then I
19 don't -- and then we'll have on top of that,
20 do you need any other protection here, if you
21 have the security guard? He obviously is not
22 to associate with known criminals. The only
23 people who will be allowed to come into his
24 home would be the family who lives there.

25 And the only reason why he would be

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1 able to leave the home will be to go to visit
2 his daughter in the hospital and that's it.

3 MR. GENSER: Judge, for the record, I
4 do have to say that even those conditions, the
5 government feels are inadequate but we
6 appreciate your Honor's imposing them.

7 THE COURT: We'll do that then.

8 And are the suretors here?

9 MR. PORCO: They're here.

10 THE COURT: Is there anything else you
11 wish to say? I mean --

12 MR. PORCO: I was going to ask the
13 Court -- well, I thought better of asking
14 your Honor. I'll ask your staff, the
15 mechanics of doing this. If we sign the bond,
16 would the defendant be entitled to released or
17 now that the government imposed that other
18 condition, we would have to --

19 THE COURT: He's not going to be
20 entitled to release --

21 MR. PORCO: Until --

22 THE COURT: -- until he's needed at
23 the hospital.

24 MR. PORCO: All right. That was the
25 only question I had.

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1 THE COURT: That's Monday morning and
2 he's to return the following Monday.

3 MR. PORCO: So, Monday is the --

4 THE CLERK: 15th.

5 MR. PORCO: -- 15th to 22nd.

6 THE COURT: Yes.

7 MR. PORCO: So then I have between
8 today and Monday morning to secure the
9 services of --

10 THE COURT: Of a -- yes, of a proper
11 security guard to be paid for at
12 Mr. Cassarino's expense and that person is to
13 be available to report to Mr. Genser and to
14 the government on a -- as Mr. Genser requires.

15 MR. PORCO: Very well, Judge.

16 THE COURT: I know it's, you know --
17 and there's a lot out here but I am trying to
18 accommodate the daughter here.

19 MR. PORCO: I know you are.

20 MR. GENSER: Judge, I just hope the
21 record is clear that the Court will not
22 entertain any further applications for
23 extensions or changes or modifications to
24 this. The government strenuously opposes that
25 type of a thing.

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1 THE COURT: Well, I mean, I don't --

2 MR. GENSER: I just hope that we're
3 all on the same page with it.

4 THE COURT: I don't anticipate
5 anything but who knows what --

6 MR. PORCO: I made a representation to
7 the Court that we have no intentions of
8 seeking extensions.

9 THE COURT: It seems like this is a
10 heartfelt representation and certainly, I
11 think I'm clear in terms of what I am doing
12 here and as far as the future is concerned,
13 none of know --

14 MR. GENSER: Judge, I just also want
15 the Court to make -- make sure the Court's
16 aware of the proffer that we made in the brief
17 about Mr. Cassarino's conduct, which has not
18 been consistent with, you know, a true family
19 man.

20 THE COURT: Mr. Genser, all of your
21 arguments are well stated and are noted by the
22 Court but I think the record reflects, you
23 know, the balance that I'm trying to strike
24 here.

25 MR. PORCO: Thank you very much,

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1 Judge. I appreciate it.

2 THE COURT: All right. And I hope
3 that, quite frankly, even though I can't say
4 that I am a fan of Mr. Cassarino's based upon
5 what I've read, I do hope his daughter is
6 successful with her operation.

7 MR. PORCO: Thank you very much,
8 Judge.

9 THE COURT: And by the way, we need
10 the suretors to come forward.

11 THE CLERK: I'm sorry, your Honor?

12 THE COURT: We need the suretors to
13 come forward.

14 MR. GENSER: Judge?

15 THE COURT: Yes.

16 MR. GENSER: As I am standing here, I
17 would also propose an additional condition.

18 THE COURT: You see, a lot of times we
19 think of these after thoughts.

20 MR. GENSER: Yes.

21 THE COURT: Yes.

22 MR. GENSER: That Mr. Cassarino, while
23 he's out for this week, that he be forbidden
24 from suing any telephones, given that so many
25 of his threats were executed through the

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1 telephone. He shouldn't use the home phone.

2 MR. PORCO: Not a problem.

3 MR. GENSER: And he shouldn't use --

4 THE COURT: Okay.

5 MR. PORCO: Not a problem.

6 THE COURT: Agreed. I think we got it
7 all down.

8 MR. GENSER: -- cell phones.

9 THE COURT: Now, Mr. Innelli, the
10 Court's wonderful clerk is feverishly writing
11 away here. Hopefully, I'm sure he's got it
12 right.

13 But at this time, we want the suretors
14 to step forward and identify themselves and
15 tell me what the security is that they have
16 offered. Ms. Vasquez, you double check this
17 as we go along. And then I'll talk to each of
18 you after you identify yourself.

19 The first person?

20 THE CLERK: Please state and spell
21 your name for the record.

22 MR. PORCO: State your name.

23 MR. CASSARINO: Angelo Cassarino.

24 THE COURT: Follow Mr. Innelli's
25 directions. He's going to swear you in and

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1 he's going to ask you some questions.

2 MS. VASQUEZ: First name?

3 MR. CASSARINO: Angelo.

4 MS. VASQUEZ: What's your name?

5 MR. CASSARINO: Angelo Cassarino.

6 A N G E L O C A S S A R I N O ,

7 called as a suretor, having been first duly

8 sworn, was examined and testified as

9 follows:

10 THE COURT: Tell us, Ms. Vasquez, what
11 is the security that this gentleman has
12 offered?

13 MS. VASQUEZ: I believe it's a \$50,000
14 -- is that a CD account; right? I have copies
15 of it. It's okay. I have copies of it. With
16 Northfield Savings Bank?

17 MR. CASSARINO: That's account.

18 THE COURT: That's -- you've confirmed
19 that, there's a \$50,000 CD that he's put up;
20 right?

21 MR. CASSARINO: Yes.

22 THE COURT: Okay.

23 Next person? Just stay here for a few
24 moments. Step aside but stay here.

25 Go ahead.

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1 D O R E E N C A S S A R I N O ,
2 called as a suretor, having been first duly
3 sworn, was examined and testified as
4 follows:

5 THE CLERK: Please state and spell
6 your name for the record.

7 MS. CASSARINO: Doreen Cassarino.

8 THE COURT: Ms. Cassarino, what
9 security have you put up.

10 MS. CASSARINO: Salary.

11 THE COURT: I'm sorry?

12 MS. CASSARINO: My salary.

13 THE COURT: Your salary.

14 MS. CASSARINO: Yes.

15 THE COURT: And anything else?

16 MS. CASSARINO: No.

17 THE COURT: And tell me what that
18 salary is?

19 MS. CASSARINO: \$25,000.

20 THE COURT: And you work for whom?

21 MS. CASSARINO: Excuse me?

22 THE COURT: Who do you work for?

23 MS. CASSARINO: The Jewish Board of
24 Family Children Services.

25 THE COURT: The Jewish Board, it can't

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1 be so bad then.

2 Is that true, Ms. Vasquez? You're
3 satisfied with that?

4 MS. VASQUEZ: That's correct.

5 THE COURT: All right. Stay here.
6 And let me speak to the next person.

7 THE CLERK: I ask if you could just
8 state your name for the record.

9 MR. CASTELLANO: Louis Castellano.

10 L O U I S C A S T E L L A N O ,
11 called as a suretor, having been first duly
12 sworn, was examined and testified as
13 follows:

14 THE COURT: Mr. Castellano, tell me
15 the security that you are willing to put up
16 here?

17 MR. CASTELLANO: I can't hear too
18 good.

19 THE COURT: All right. Do you want me
20 to yell -- I don't like to yell at people but
21 if you want me to, what security have you put
22 up?

23 MR. CASTELLANO: A house.

24 THE COURT: And tell me a little bit
25 about that. What is the equity in that house?

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1 How much is it worth?

2 MR. PORCO: Do you have a mortgage?

3 MR. CASTELLANO: Yes.

4 MR. PORCO: How much of a mortgage?

5 MR. CASTELLANO: About \$160,000.

6 MR. PORCO: How much do you think the
7 house is worth?

8 MR. CASTELLANO: About \$900,000.

9 MR. PORCO: We believe we have equity
10 of about \$800,000.

11 THE COURT: All right. And
12 Ms. Vasquez, are you satisfied with that from
13 your investigations?

14 MS. VASQUEZ: We have a copy of the
15 deed but we do not have an appraisal.

16 THE COURT: Where is the house?

17 MS. VASQUEZ: It's in Carroll Gardens
18 in Brooklyn.

19 THE COURT: Well, we know that Carroll
20 Gardens in Brooklyn --

21 MR. PORCO: It's a three family,
22 your Honor.

23 THE COURT: It's a three family house?

24 MR. PORCO: Yes.

25 THE COURT: It sounds like it's worth

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1 certainly much more than the mortgage.

2 MR. PORCO: Yes.

3 THE COURT: Thank you very much. Just
4 stay here. Let me speak to the next person.

5 C A M I L L A R I V I E C C I O, ,

6 called as a suretor, having been first duly
7 sworn, was examined and testified as
8 follows:

9 THE CLERK: Can I ask you to please
10 state your name for the record.

11 MS. RIVIECCIO: Camilla Rivieccio.

12 THE COURT: Tell me your security that
13 you are willing to put up?

14 MS. RIVIECCIO: A \$25,000 savings
15 account.

16 THE COURT: A savings account.

17 MS. RIVIECCIO: Yes.

18 THE COURT: And?

19 MS. RIVIECCIO: And also, a retirement
20 plan.

21 THE COURT: There's plenty of
22 security.

23 Ms. Vasquez, do you acknowledge that
24 you're satisfied with that?

25 MS. VASQUEZ: Yes.

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1 THE COURT: Thank you very much.

2 And the next?

3 THE CLERK: Please state your name for
4 the record. Could you spell it, too.

5 L I S A R I V I E C C I O ,

6 called as a suretor, having been first duly
7 sworn, was examined and testified as
8 follows:

9 MS. L. RIVIECCIO: Lisa Rivieccio.

10 It's R-i-v-i-e-c-c-i-o.

11 THE COURT: And tell me the security
12 that you're willing to forgo, should
13 Mr. Cassarino not comply with his conditions
14 of release.

15 MS. L. RIVIECCIO: My salary.

16 THE COURT: Your salary and how much
17 is that?

18 MS. L. RIVIECCIO: It's around
19 \$42,000.

20 THE COURT: And who is your employer?

21 MS. L. RIVIECCIO: Bernum, Wise &
22 Tobacco (phonetic).

23 THE COURT: All right. And you've
24 confirmed that, Ms. Vasquez, as well?

25 MS. VASQUEZ: Yes.

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1 THE COURT: All right. We have one
2 last person. Just wait here.

3 A N T O I N E T T E C A S S A R I N O ,
4 called as a suretor, having been first duly
5 sworn, was examined and testified as
6 follows:

7 THE CLERK: Please state your name.

8 MS. CASSARINO: Antoinette Cassarino.

9 THE CLERK: Okay.

10 THE COURT: All right. And what are
11 you willing to forgo if Mr. Cassarino doesn't
12 comply with his terms of release.

13 MS. CASSARINO: My house.

14 THE COURT: Your house?

15 MS. CASSARINO: My house.

16 THE COURT: Tell me a little bit about
17 that; the mortgage and what you think the
18 equity is.

19 MS. CASSARINO: It's -- last year it
20 was appraised at \$425,000. We owe, I think,
21 \$308.

22 THE COURT: So, about \$100,000 equity.
23 Does that square with your information,
24 Ms. Vasquez?

25 MS. VASQUEZ: Yes, it does.

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1 THE COURT: All right.

2 Now, folks, let me just tell you --
3 all of you collectively, this. You probably
4 realize what I am about to say but if
5 Mr. Cassarino does not comply with these
6 conditions of release, even though it's only
7 one week, that you each will be jointly and
8 severally liable for the bail that's being
9 imposed here.

10 And I guess I should set bail here and
11 I'm setting it at \$1 million.

12 And Mr. Cassarino, I am sure realizes
13 that if he doesn't comply with the Court's
14 orders that he's going to jeopardize all of
15 the security that you have just articulated
16 before me.

17 Are you all willing to do this, to be
18 jointly and severally responsible up to \$1
19 million with the security that you have to
20 secure that bond? Yes? Do I hear everybody
21 say yes?

22 THE SURETORS: Yes.

23 THE COURT: All right. Just so that
24 you realize what's happening here and the
25 seriousness of this proceeding. I know it's a

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1 difficult time for your family and everybody
2 else, but nonetheless, I made my
3 determinations and we're going to abide by
4 that, all of us; okay?

5 MR. GENSER: Judge, if we could just
6 go over the conditions one last time.

7 THE COURT: I think we have them.
8 Let's see what Mr. Innelli has written down.

9 THE CLERK: Okay.

10 THE COURT: There's no telephone.

11 MR. GENSER: Well, it's home
12 confinement subject to electronic monitoring.

13 THE CLERK: With 24 hour guard and to
14 pay for the electronic monitoring and to pay
15 for the guard. His consent to searches, no
16 phones, cell phones or any other kind of
17 phone. He's in home detention. He's only
18 allowed to leave to visit his daughter at the
19 hospital. He's not to associate with any
20 known criminals. Only family members living
21 in the home are allowed to be at the home.

22 And that's all I have.

23 THE COURT: I think that's sufficient
24 but if there's going to be a 24 hour guard, do
25 we need to have electronic monitoring on top

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1 of that?

2 MR. GENSER: Absolutely, your Honor.

3 THE COURT: Why? There's going to be
4 a guard outside.

5 MR. GENSER: Judge, it's a --

6 THE COURT: Do you mean may fall
7 asleep --

8 MR. GENSER: The measures are
9 necessary. This has been done in other cases.

10 THE COURT: All right.

11 MR. GENSER: The guard --

12 THE COURT: We'll do it.

13 MR. GENSER: -- is a supplement to the
14 electronic monitoring.

15 THE COURT: We'll let it go then.

16 MR. GENSER: We would also ask that
17 there be no contact with anyone that's been
18 heard on any tapes or that he believes to be a
19 victim in the case.

20 THE COURT: We just said he only is to
21 have --

22 MR. PORCO: There's no phones.

23 THE COURT: There's no phones and he's
24 only --

25 MR. PORCO: Well, he might be able to

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1 do it by e-mail.

2 MR. GENSER: I'm just reading this
3 note.

4 THE COURT: Let's not get --

5 MR. GENSER: One last thing, Judge, if
6 I can. One last request.

7 THE COURT: Yes, no e-mail.

8 MR. PORCO: No e-mail.

9 MR. GENSER: That the government --

10 MR. PORCO: And no pigeons.

11 THE COURT: He's not to have contact
12 by -- let me just say --

13 MR. GENSER: Yes.

14 THE COURT: He's not to have contact
15 with nobody except his immediate family. I
16 assume he's not going to threaten them. And
17 he's not to visit any threats, of course, even
18 through his immediate family.

19 I think we're clear about it. I
20 really don't think we're going to have any
21 problems here under the circumstances of this
22 case.

23 MR. PORCO: That's right. You're not.

24 THE COURT: Okay?

25 MR. GENSER: Just one last request

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1 that the government have a chance to find out
2 who the security guard is going to be, what
3 service is going to provide it and have a
4 chance to give its approval on that. So that
5 we can have some confidence that it's going to
6 be a neutral --

7 THE COURT: Well --

8 MR. PORCO: I was going to ask
9 Mr. Genser to give me the name or names --

10 MR. GENSER: I will suggest some,
11 actually.

12 THE COURT: I have confidence that
13 distinguished counsel will be able to find an
14 appropriate security guard to go with the
15 electronic monitoring and everything else.

16 Enough is enough.

17 MR. GENSER: Thank you, Judge.

18 MR. PORCO: Now if I may just one
19 brief request, would you consider allowing
20 Mr. Cassarino to be released Sunday evening,
21 so that he could be there in the home on
22 Monday morning when his daughter goes to the
23 hospital.

24 THE COURT: I'll do that.

25 MR. PORCO: Very good. Thank you very

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1 much, sir.

2 THE COURT: Okay.

3 Thank you very much for your joint
4 collective cooperation.

5 MR. GENSER: Judge, just so I am
6 clear, what -- when does he have to return to
7 jail?

8 THE COURT: Let's make it very
9 specific. Monday evening, he can leave at
10 5 o'clock.

11 MR. PORCO: Directly to here -- the
12 marshals, I guess.

13 THE COURT: I don't know how the
14 mechanics work out. I mean, you know -- and
15 he has to back the following Monday, I guess 9
16 in the morning.

17 MR. GENSER: I think your Honor meant
18 to say Sunday evening he can leave.

19 THE COURT: Sunday evening. What did
20 I say, Monday?

21 MR. GENSER: You said Monday.

22 THE COURT: Sorry, Sunday, 5 o'clock,
23 return to the -- where is he, at the MDC?

24 MR. PORCO: MDC.

25 THE COURT: The Monday on --

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1 MR. PORCO: The 22nd.

2 THE COURT: The 22nd. Let's get the
3 dates down specifically.

4 THE CLERK: That he be -- that he's
5 allowed to leave custody as of Sunday, July 14
6 at 5 p.m. and he must return the following
7 week, which would Monday, July 22 by --

8 THE COURT: At 9 o'clock.

9 MR. PORCO: 9 a.m.

10 THE CLERK: 9 a.m.

11 MR. PORCO: Very well,

12 THE COURT: Okay. That's it.

13 MR. PORCO: Thank you very much,
14 your Honor.

15 MR. GENSER: Thanks, Judge.

16 THE COURT: Thank you, Ms. Vasquez.

17 (Pause in proceedings)

18 THE COURT: What's the problem,
19 Mr. Genser?

20 THE CLERK: They want him to sign on
21 the record and you as apprising him of his
22 conditions of his release.

23 THE COURT: Okay.

24 We told the suretors, you know, what
25 the terms are and we asked them specifically

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1 whether they agreed to be bound by all of
2 those terms and conditions but the defendant,
3 I guess, should sign in open court.

4 At this time, Mr. Cassarino is here.
5 He's signing the bond.

6 Mr. Cassarino, it's \$1 million that
7 you're signing your John Hancock to and you
8 understand that if you don't comply with those
9 terms and conditions of your release, that
10 you'll be personally liable for \$1 million.

11 THE DEFENDANT: Yes, I do.

12 THE COURT: All right. And you also
13 realize that all those good suretors who stood
14 before the Court will also be at risk
15 individually and jointly and severally, as the
16 saying goes, for the loss of their security.

17 Do you understand that?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: All right. Are you
20 willing to abide by all these conditions of
21 release?

22 THE DEFENDANT: Yes, I am.

23 THE COURT: Okay. So, sign the bond
24 now in the Court's presence.

25 MR. PORCO: Your Honor, while the

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1 defendant is doing that, again, this is very
2 new to me in terms of being able to deal with
3 this brief release, I believe that the order
4 states that a condition is only members of the
5 family who actually live in Mr. Cassarino's
6 house but he has his mother and father, one of
7 whom were his sureties, who are the
8 grandchildren -- the grandparents of the
9 child, I don't see any --

10 THE COURT: I assume

11 MR. PORCO: -- harm in having family
12 members who want to come and visit the child
13 after surgery, you know, present a problem for
14 anyone.

15 THE COURT: Well, I assumed that these
16 folks lived in that house.

17 MR. PORCO: Well, his parent --
18 Mr. Cassarino's parents do not.

19 THE COURT: So, his parents can come
20 to visit. That's what you're requesting and
21 his grandparents.

22 MR. PORCO: Yes.

23 THE COURT: All right.

24 MR. PORCO: The child --

25 THE COURT: The parents and

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1 grandparents.

2 You see what happens is that we always
3 think. Tonight you'll be dreaming, you'll
4 think of other things. Mr. Genser will think
5 of other things. He's going to call up
6 tomorrow in a panic.

7 But I think it's sufficient. We've
8 gone far enough. I just cannot fathom there's
9 going to be any problem here whatsoever.

10 MR. PORCO: I agree with you, Judge.

11 THE COURT: So grandparents and
12 parents.

13 MR. PORCO: Right. The defendant has
14 asked me also if your Honor would consider
15 allowing him to return on Friday instead of
16 Monday. He would be willing to come in Friday
17 of next week if you let him -- if he can be
18 released today.

19 THE COURT: No.

20 MR. PORCO: He will come back on
21 Friday.

22 MR. GENSER: Judge, I have to object
23 to all of this.

24 THE COURT: No, I'll tell you, if I
25 get one more request, I'm going to revoke

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1 everything.

2 MR. PORCO: No, we don't want to do
3 that.

4 THE COURT: I've gone as far as I can
5 go period. I mean I spent time, you know,
6 being very particular about this and don't ask
7 me anything else.

8 MR. PORCO: Thank you.

9 MR. GENSER: Judge, I just want to put
10 on the record that Mr. Porco has agreed to get
11 the confessions of judgment filed by Friday,
12 which is perfectly reasonable.

13 THE COURT: Is the confessions of
14 judgment part of the security here?

15 MS. VASQUEZ: I believe so. There was
16 one gentleman who had the home in Carroll
17 Gardens.

18 MR. GENSER: If you're going to post
19 property, you have to file a confession of
20 judgment in order for it to actually be
21 posted.

22 THE COURT: I asked you whether the
23 security was in place. You said yes. I took
24 your word for it.

25 MS. VASQUEZ: I'm sorry, your Honor.

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1 THE COURT: I took your word for it.
2 You've never been known to say anything
3 incorrect to me. So, I am sure that
4 everything is in order as you represented it.
5 Okay?

6 MR. PORCO: That's it.

7 THE COURT: All right. That's it.

8 MR. PORCO: Thank you very much,
9 your Honor.

10 (Matter concluded)

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C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 1st day of October, 2002.

Rosalie Lombardi

Rosalie Lombardi
Transcription Plus II